IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7743 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AMRATBHAI SHANKARBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7743 of 1999

MR AR LAKHIA for Petitioner No. 1

MR. KUNJAL PANDYA, AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 4-5

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 19/08/2004

ORAL JUDGEMENT

1. In this petition, it is the case of the petitioner that one Jarinkhan Gujarkhan Pathan was the original owner of land bearing survey No. 32/2

admeasuring 6 acres & 14 gunthas; land bearing survey no. 35/5 admeasuring 2 acres & 6 gunthas and land bearing survey no. 36/2 admeasuring 3 acres and 16 gunthas respectively situated at village Iqbalgadh, Taluka Panlanpur. Said original owner sold aforesaid lands to Patel Shamjibhai Shivjibhai and Arjanbhai Shivjibhai. In year 1984 aforesaid lands were purchased by the present petitioner Patel Amratbhai Shankarbhai from said Patel Shamjibhai Shivjibhai & Arjanbhai Shivjibhai. According to the Dy. Collector, Palanpur the petitioner was not an agriculturist residing within 8 k.ms of the area wherefrom the aforesaid lands have been purchased, and therefore, necessary proceedings were initiated against the petitioner. Consequent upon by order dated 31-8-1991 passed in Tenancy Revision No. 16 of 1991, the order dated 4-4-1990 in Tenancy 217/88 passed by Mamlatdar & Agricultural Tribunal, Deesa came to be quashed for violation of sections 2 (2), 2 (6) and 63 of the Tenancy Act and further ordered to admit the said lands without compensation to the Government and to dispose it under section 84-A of the Bombay Tenancy Act.

2. Being aggrieved and dissatisfied with the above order passed by Dy. Collector, Palanpur dated 31-8-1991 passed in Tenancy Revision No. 16 of 1991, petitioner preferred revision application before the Gujarat Revenue Tribunal, Ahmedabad being Tenancy Revision Application No. TEN/NA/802/91. Gujarat Revenue Tribunal by its judgment & order dated 23-6-1999 dismissed the said revision by confirming the order passed by Dy. Collector, Palanpur dated 31-8-1991. Being aggrieved and dissatisfied with the judgment & order passed by Gujarat Revenue Tribunal dated 23-6-1999 in dismissing the revision application and confirming the order passed by Dy. Collector, Palanpur dated 31-8-1991, petitioner has preferred present Special Civil Application under Article 226 of the Constitution of India.

3. Shri. P.M. Bhatt, learned advocate for the petitioner has submitted that during pendency of the present proceedings the restriction regarding distance within 8 k.ms has been deleted. It is submitted that by Gujarat Act No.4 of 1995 which came into force on April 6, 1995, the State Legislature deleted the portion beginning with the words "bearing land entire area" and as per the amended provision all the proceedings relating to any order made or purported to be made under Section 84-C of the Tenancy Act; for contravention of Sectin 63, in so far as it relates to the breach of Clause (6) of Section 2 of the Tenancy Act, pending before any Court, Tribunal or other authority shall stand abated,

notwithstanding anything contained in Section 84-C of the Tenancy Act, provided that the validity of any order of any Court, Tribunal or authority, which had become final, was not to be affected. As per explanation to Section 4 the word "final" means "No Appeal"; means no appeal, revision or any other proceeding is pending before any Court, Tribunal or other authority against any such order on April 6, 1995. To substantiate his contention learned advocate for the petitioner has relied upon the judgment of this Court in the case of VISHNUBHAI AMBALAL PATEL Vs. SHANKERJI PUJJAJI THAKORE AN ANR. 2002 (3) G.L.H. 78. In the said decision this Court has passed order of abatement of proceeding, i.e. Special Civil Application No. 5668 of 1986 with Special Civil Application No. 10099 of 1995; considering the amended provision by holding that the pendency of the Special Civil Applications will be construed as pending proceedings and therefore required to pass appropriate order to abate the proceedings, and thereby quashing and setting aside the order passed by Gujarat Revenue Tribunal as well as Dy. Collector respectively.

4. Shri. Kunjal Pandya, learned AGP has conceded to the aforesaid proposition of law and has submitted that the case is covered by the judgment of this Court in Vishnubhai Ambalal Patel (supra).

5. In view of the settled legal position and considering the decision of this Court in case of Vishnubhai Ambalal Patel (supra) and further considering the same fact situation in the case on hand, present petition is allowed. The judgment and order dated 23-6-1999 passed by Gujarat Revenue Tribunal in Revision Application being TEN/NA/802/91, confirming the order passed by Dy. Collector, Palanpur in Tenancy Revision No. 16/91 dated 31-8-1991 are hereby set aside. The respondents authorities are restrained from continuing with the possession of the lands under section 84-C of the Bombay Tenancy And Agricultural Lands Act, 1948 in respect of the lands in question as the said proceeding is abated in view of Gujarat Act No. 4 of 1995. Rule is made absolute. No order as to costs.

Dt: 19-8-2004 (M.R. SHAH, J)

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